IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3091 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MAHESANA DIST GENERAL ASSN

Versus

DY PRESERVATION OFFICER

Appearance:

1. Special Civil Application No. 3091 of 1991

MR BG JANI for Petitioner No. 1

NOTICE SERVED for Respondent No. 1

Mr.Premal Joshi, Asst.GOVERNMENT PLEADER for Respondent No. 2

M/S PATEL ADVOCATES for Respondent No. 3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 13/02/2002

ORAL JUDGEMENT

The petitioner-Mehsana District General

Association has preferred this petition for various reliefs, interalia, for directing the respondent-State and its officers to treat the members of the petitioner-Association as regular permanent workmen of the Forest Reservation Department and to grant all benefits which are being given to regularly appointed Watchman and Gardner as per service rules of the Government like seniority, promotion, benefit of leave rules, bonus, overtime etc. It is also prayed that the respondent-State may be directed to pay the arrears of salary and other benefits to the members of the petitioner-Association calculated from the date of initial appointment and also to direct the Labour Officer to take effective steps to to stop unfair labour practice adopted by the respondent-State and to further direct the respondent-State to comply with the statutory provisions of the Industrial Disputes Act and Minimum Wages Act etc. The petitioners have also claimed that all the members of the association be paid similar time scales which are being paid to the regularly appointed Watchman and Gardner.

2. Initially notice was issued in this petition and statusquo regarding service conditions was ordered as per order dated 1.5.91. Thereafter, on 17.7.91 when the petition came to be admitted the ad interim relief was refused. It does not come on record as to whether the present petitioners are as on today working with the respondent-department or not. However, on behalf of the respondents affidavit in reply has been filed by one Mr.K.A.Pandya, Assistant Conservator of Forests contending, interalia, that the petitioner or its members have also approached the concerned labour court and therefore this petition is not maintainable. It is also contended by the respondents that the engagement of members of the petitioner association was as daily wage labourers. In para 10 of the affidavit in reply it has been mentioned as under:

> "It is submitted that members of the petitioner-union are working as daily wage labourers under respondent No.1. It is submitted that the work with regard to Social Forestry is seasonal in nature. It is submitted that work pertaining to plantation, watering of plants, digging pits for plantation etc is not done round the year. It is submitted that the above referred activities are purely seasonal."

It is also interalia contended by the respondents that if there is no work there is no obligation on the respondents to engage any daily wager. It is

specifically stated that no new labourers are appointed when the old labourers are willing to work as daily wagers. It is also contended by the respondents that there is no question of regularising the employment of the members of the petitioner association for the reason that the work which the petitioners are doing is not continuous in nature. It is also contended that the nature of work done by the daily wagers who are the members of the petitioner-association is absolutely different than the person who are working in regular establishment. It is also contended that if the members of the petitioner-association are now absorbed on regular establishment it would amount to injustice to other qualified persons who never got opportunity to compete with the members of the petitioner-association and the absorption of the daily wager to regular establishment would amount to doing undue favour to them and it would adversely affect the prospects of getting employment to those unemployed persons whose names are with the Employment Exchange.

3. There is no affidavit in rejoinder filed by the petitioner to the aforesaid affidavit in reply filed by the State Government. Therefore matter is required to be examined from that angle.

4. It is well settled that when the work is of seasonal in nature and when the engagement is only for that purpose and when there is no work, the engagement is discontinued and thereafter when the work is available again the engagement is made on daily rate basis it can not be said to be unfair labour practice nor can be said that there is any exploitation of workmen. Further, the petitioners have not produced any documentary evidence to show that the work is of a permanent nature and inspite of the availability of work the members of the petitioner Association are deprived of their legitimate right under the Industrial Disputes Act and artificial break has been given. Therefore the contention regarding unfair labour practice can not be accepted.

5. The contention regarding absorption in the permanent set up and to direct the respondents to pay payscale and other benefits which are being paid to the regularly appointed Watchman and Gardner of the Forest Department is concerned, the said contention can not be accepted for the simple reason that the regularly selected persons have to compete with the other qualified persons and after undergoing regular selection process they are to be selected. Whereas, the status of the petitioners is only as that of daily rated employees. In

the matter of State of Himachal Pradesh vs Suresh Kumar Verma reported in JT 1996 (2) SC 445 the Apex Court has held as under:

"it is settled law that having made rules of recruitment to various services under the State or to a class of posts under the State, the State is bound to follow the same and to have the selection of the candidates made as per recruitment rules and the appointments shall be made accordingly."

It has been further held by the Apex Court as under:

"Appointment on daily wage basis is not an appointment to a post according to the Rules. The vacancies are required to filled in accordance with the rules and all the candidates who would otherwise eligible are entitled to apply for when recruitment is made and seek consideration of their claims on merit according to the Rules for direct recruitment along with all the eligible candidates. The appointment on daily wages can not be a conduit pipe for regular appointments which would be a back door entry detrimental to the efficacy of service and would breed seeds of nepotism and corruption. It is equally settled law that even for class IV employees recruitment according to Rules is a pre-condition."

6. In view of the above it is clear that the daily wage employees have no right whatsoever to the post. If there is no right to the post, the members of the petitioner Association can not claim the same payscale which is being paid to other regularly selected employees on the post of Watchman and Gardner. Further not only that but no material is placed on record by the petitioner to show that the nature of work which being carried out by the petitioners as daily rated workmen is the same as being done by the Watchman and Gardner. Even if it is accepted that for some period the work is discharged by the members of the petitioner Association is the same which is being discharged by regularly selected Watchman and Gardner it can not be said that the petitioner enjoys same status of the post as that of regularly selected Watchman and Gardner. Unless and until same status to the post is established, the

equality can not be claimed by the petitioners and therefore the contention for regularisation as well as for directing to make payment of same payscale which is being paid to the regularly selected persons and to extend the benefits accordingly, both are, of no substance,and hence, same deserve to be rejected.

7. As regards last contention of the petitioner to direct the Labour Officer to take effective steps for compliance of statutory provisions of Industrial Disputes Act and Minimum Wages Act and the benefits of the payment of bonus by the respondent is concerned, it is contended by the State Government that the said issue was raised and the same was pending. Regarding noncompliance of Minimum Wages Act is concerned, no material is produced on record by the petitioner that a particular amount was a minimum wage fixed and the amount which was paid to them as daily wage employees was less than that at the relevant period. Unless and until the said aspect is brought on record this court is unable to examine the same and therefore this contention can not be accepted. If the petitioners have any grievance regarding noncompliance of Minimum Wages Act there is already remedy available to them under the Statute before appropriate forum and so far as the benefits of the payment of bonus is concerned, unless the status of the petitioner is of regular employee no right can be derived by the petitioners. As observed earlier, since the petitioners are in capacity as daily rated persons have no right whatsoever for the post of Watchman or Gardner and no benefit should flow to them under the provisions of the Payment of Bonus Act.

8. Under the above circumstances, I am of the view there is no substance in the petition and the petition is dismissed. Rule is discharged with no order as to costs.

13.2.2002 (JAYANT PATEL,J)